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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/898,255	07/03/2001	Kevin Thomas	88265-4040	1910
29157	7590	07/19/2005	EXAMINER	
BELL, BOYD & LLOYD LLC			ST CYR, DANIEL	
P. O. BOX 1135			ART UNIT	
CHICAGO, IL 60690-1135			PAPER NUMBER	
			2876	

DATE MAILED: 07/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/898,255

Applicant(s)

THOMAS ET AL.

Examiner

Daniel St.Cyr

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 May 2005.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6, 10-29 and 32-37 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-4, 6, 10-29 and 32-37 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. This is in response to the applicant amendment filed in which the claims were amended.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-4, 6, 10-17, 21-24, and 32-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wright, US Patent No. 5,285,041, in view of Isaacman et al, US Patent No. 5,936,527 and Reese et al, US Patent No. 5,353,692.

Wright disclose an automated food vending machine comprising: a receptacle having at least one wall member that defines an enclosure, a food-forming product forming a package 40 present within the enclosure, and a tag (code) associated with the food-forming product, wherein the tag includes machine-readable information regarding the product which information is programmed at the manufacturing plant and includes instructions for controlling at least one of preparation of a food (see figure 1, col. 5, line 64 to col. 6, line 23, and col. 7, line 65 to col. 8, line 38), the tag is affixed to an exterior surface of the package (see col. 6, line 13), the tag includes a date of expiration in electronic form for the product (see col. 8, line 9), the food provides single/multiple-serving portions (frozen fried food could either be a single or multiple servings), the food-forming product is a powder, concentrate, or ready to eat (see col. 8, lines 1-7), and the package is composed of non-conductive material and the tag is located within the enclosure (of the machine) (see col. 8, line 42).

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Wright discloses that the code could be bar, magnetic, optical, or other types of code, but fails to specifically disclose:

- a) an RFID reprogrammable tag; and
- b) the food is beverage.

Isaacman et al disclose a method and apparatus for locating and tracking document and other objects comprising: (a) RFID tags a-n, wherein the tags are reprogrammable.

In view of Isaacman et al's teachings, it would have been obvious for a person of ordinary skill in the art at the time the invention was made to modify the vending system of Wright to employ reprogrammable RFID tags to store the products information. Such modification would enhance and facilitate communication between a reader and the tags and would provide greater storage to store more information so as to effectively identify the products and would more cost effective wherein the tags could be reprogrammed to update prices. Therefore, it would have been an obvious extension as taught by Wright.

Wright as modified by Isaacman fails to disclose (b).

Reese et al disclose a hot beverage brewing apparatus comprising: (b): a hot water heating and storage tank 32 mounted on the side of a cabinet 14 for providing the hot liquid; a water filter 34 is provided on the inlet to the hot water tank 32; a chocolate ingredient canister 36 mounted in cabinet 14 next to a product canister 18; a mixing bowl 38 and whipping mechanism 40 are mounted beneath canister 36 for receiving chocolate and water and mixing and whipping the same; a second whipping mechanism 42 is provided to whip cappuccino or espresso. (see figure 1 and col. 4, line 7+).

In view of Reese et al's teachings, it would have been obvious for a person of ordinary skill in the art at the time the invention was made to modify the system Wright as modified by Isaacman et al to provide beverage products. Such modification would make the system more desirable wherein customers could purchase both food and beverage at the same vending system. Such modification would make system profitable and would more convenient to patrons by providing both food and beverage. Therefore, it would have been an obvious extension as taught by Wright as modified by Isaacman et al.

Re claims 4, 10 and 23, Wright as modified by Isaacman et al and Reese et al fails to disclose or fairly suggest that tag is affixed to an interior surface of the package, the expiration date is from the date when the package is opened, or the package is composed of conductive material.

However, such limitation falls within the engineering design choice.

It would have been obvious for an artisan at the time the invention was made to conceal the tag inside the package to protect the tag from accidental liquid spillage, to set the expiration date when the package is opened or when the food was made according to the food product, and compose the package with conductive material for enhancing communication between the reader and the tag. Therefore, it would have been an obvious extension as taught by Wright as modified by Isaacman et al and Reese et al.

Re claim 14-17, Wright as modified by Isaacman et al and Reese et al fails to disclose or fairly suggests generating an error code to disable the dispenser and notifies an operator.

However, since the tag is read to obtain information from a data source, if the information in the tag cannot be verified or unreadable, a signal would be communicate to the

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operator in order to take the appropriate action. Regarding disabling the dispenser, the information is needed to operate the dispenser, therefore, the dispenser is disable until the information is obtained.

It would have been obvious for an artisan at the time the invention was made to generate an error code when the tag information cannot be verified or the tag is unreadable to notify the user for appropriate actions to process the food vending machine. Such modification would make the system more effective by providing means to rectify operation when problems occur. Therefore, it would have been an obvious extension as taught by Wright as modified by Isaacman et al and Reese et al.

4. Claims 18-20 and 25-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wright as modified by Isaacman et al and Reese et al as applied to claims 1-17 above, and further in view of Buckley et al, US Patent No. 5,285,041. The teachings of Wright as modified by Isaacman et al and Reese et al have been discussed above.

Wright as modified by Isaacman et al and Reese et al fails to disclose or fairly suggests that vending machine is connected to an external unit wherein the database is updated to schedule re-supplying of the vending machine.

Buckley et al disclose a computer controlled system for vending personalized products comprising a remote location 154 connected to the vending machine 10 wherein information is updated and communicated to the remote location scheduling re-supplying.

In view of Buckley et al's teachings, it would have been obvious for a person of ordinary skill in the art at the time the invention was made to modify the system Wright as modified by Isaacman et al and Reese et al to include a central location wherein information is communicated

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and updated to provide scheduled re-supply of products. Such modification would enhance the system performance by constantly making the products available to customers, which would make the vending machine more effective (more beneficial). Therefore, it would have been an obvious extension as taught by Wright as modified by Isaacman et al and Reese et al.

Response to Arguments

5. Applicant's arguments with respect to claims 1-37 have been considered but are moot in view of the new ground(s) of rejection.

ADDITIONAL REMARKS:

6. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel St.Cyr whose telephone number is 571-272-2407. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee can be reached on 571-272-2398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Daniel St.Cyr
Primary Examiner
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A handwritten signature in black ink, appearing to read 'Daniel St.Cyr', is written over a horizontal line. The signature is stylized with a large loop and a long horizontal stroke extending to the right.

DS
July 14, 2005